

# Social Fieldwork Research (FRANET)

European Arrest Warrant proceedings –  
safeguards for requested persons  
Perspective of requested persons

Portugal,

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Contractors: [Centre for Social Studies](#)

Authors: Marina Henriques, Conceição Gomes and Diana  
Barros

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# Table of Contents

<b>EXECUTIVE SUMMARY .....</b>	<b>3</b>
<b>INTRODUCTION.....</b>	<b>5</b>
<b>RESEARCH FINDINGS.....</b>	<b>7</b>
• 1. Right to information .....	7
a. Provision of information (when, how by whom).....	7
b. Information about rights.....	8
c. Information about the EAW – content and procedure.....	9
d. Information on consenting to surrender .....	10
e. Understanding of information .....	12
f. Discussion of findings.....	12
• 2. Right to interpretation and translation .....	14
a. Provision of interpretation (decision and means) .....	14
b. Translation of documents .....	14
c. Interpretation of consultations with lawyers .....	15
d. Additional challenges identified .....	16
e. Discussion of findings.....	17
• 3. Right to access to a lawyer .....	19
a. Information about legal assistance (including on dual representation).....	19
b. Legal assistance in executing state (access, consultations, lawyer’s tasks).....	20
c. Legal assistance in issuing state (access, consultations, lawyer’s tasks) .....	22
d. Communication between the lawyers in both states.....	23
e. Free of cost access to a lawyer (or legal aid) .....	23
f. Discussion of findings.....	24
• 4. Execution of the EAW .....	25
<b>CONCLUSION.....</b>	<b>29</b>

## **EXECUTIVE SUMMARY**

This report is based on the results of five semi-structured interviews with requested persons. Overall, the interviewees made positive assessments of their experience concerning the procedural rights during the European Arrest Warrant (EAW) proceedings. Nonetheless, some interviewees expressed their disappointment with the way they have been treated by the authorities and there were also experiences that show discrepancies between the legal framework and the practice.

### **Right to information**

The right to information is one of the dimensions where the interviews show some gaps between law and practice. Overall, the interviewees were informed about some of their rights and the content of the EAW. The findings also showed that, although the interviewees were informed about consenting to their surrender entailed, the information about the “speciality rule” was not provided to the interviewees by the judicial authorities. Additionally, regarding the understanding of the information provided, the interviewees highlighted the importance of their lawyers in clarifying all issues. They emphasised that the lack of information provided by the authorities was compensated by the important work done by the lawyers.

### **Right to interpretation and translation**

The findings show that the assistance by an interpreter was provided to requested persons when needed. However, the interviewees who needed to be assisted by an interpreter have only benefited from this support during the hearing, and not upon arrest or when consulting with their lawyers. One interviewee reported some problems regarding the quality of the interpretation, although without giving it much relevance. Regarding the right to translation, according to the interviewees, the documents of the case file that they had access to were in the national language of the issuing State. However, in two cases there was a translation of the EAW. One of the requested persons interviewed points out criticism of the quality of translation of the documents in their EAW process.

### **Right to access to a lawyer**

The right to access to a lawyer is considered by the interviewees as an essential right on EAW proceedings. Despite all the interviewees were assisted by a lawyer, the findings showed different experiences, especially regarding the information provided by the authorities to the interviewees about the right to access to a lawyer. Most of the requested persons interviewed chose their lawyer and paid for it. According to the interviewees, some of them were not informed of the right to dual representation, which shows the dissonance between law and practice. Nonetheless, in some cases, the lawyer who assisted the requested persons in the execution State have worked in articulation with a lawyer in the issuing country.

### **Execution of the EAW – factors considered**

Regarding the execution of the EAW, one interviewee consented to be handed over to the issuing state and four interviewees argued against it. However, the reasons presented to this refusal were diversified, according to the specific situation of each interviewee. Four interviewees said that the judges of the executing state took their arguments into account. However, one interviewee did end up being handed over to the issuing State.

Overall, the interviewees felt like they were treated with respect during the EAW proceedings. However, the interviewees also reported some aspects and moments when the treatment by authorities was perceived as being inappropriate.

## INTRODUCTION

The fieldwork research conducted, entailing semi-structured interviews with persons requested by an EAW, achieved the objective of providing and gathering information about the experiences of requested persons in EAW proceedings.

In total, **5 eligible interviews** were carried out in the timeframe of 30 January to 20 March 2023. All of them were conducted online, via electronic means of communication.

### ○ **PREPARATION OF FIELDWORK, IDENTIFICATION AND RECRUITMENT OF PARTICIPANTS**

#### • *Preparation of the fieldwork*

Aiming to better develop the fieldwork, a team meeting was conducted to discuss the methodology that would be used to identify possible interviewees. According to our previous experience, the most suitable way to select the interviewees was through the lawyers who have experience with EAW proceedings. We have contacted the lawyers previously interviewed about the procedural safeguards in EAW proceedings asking their assistance to identify possible interviewees who are requested persons subject to the EAW proceedings during the time frame from 27 November 2016 until 31 December 2022. This was the most suitable way since those lawyers would be more familiar with the aim of the project, could choose more suitable possible interviewees, and mediate the contact between the research team and the requested persons to be interviewed. Additionally, the lawyers also provided contact details of other colleagues who have been working on EAW cases so that the research team could also approach them to request their collaboration. In total, 15 lawyers were contacted. Nonetheless, it was very challenging to reach the total number of interviewees.

#### • *Identification and selection process of interviewees*

The identification and selection of the interviewees was carried out according to the FRA's guidelines and the interviewees profile. As explained above, the research team contacted the lawyers already interviewed within the context of this project and ask their assistance in identifying possible interviewees. Notwithstanding their initial willingness to collaborate, some lawyers asked for clarifications on the specific conditions under which the interviewees' anonymity would be guaranteed, namely regarding the anonymity of the interviewees.

At this point, one of the main difficulties was that due to the small number of EAW cases in Portugal (issued and executed), the lawyers only knew a small number of people that fit the criteria. Nonetheless, it was possible to identify requested persons that were willing to be interviewed. Following this initial phase, the research team continued to be in contact with the lawyers and received from them contact details of requested persons that agreed to be interviewed.

After receiving the contact details, the research team contacted each potential interviewee to schedule the interview. However, despite the willingness to be interviewed and the appointment confirmation, two potential interviewees failed to attend the interview, which lead the team to adopt new strategies to repeat the interviewee selection process and reach the total number of interviews.

- *Sample and description of the fieldwork*

As stated above, five interviewees were conducted. The profile of the interviewees about the issuing and execution states of the EAW is as follows: two issued in Portugal and executed in the UK; one issued in Spain and executed in Portugal; one issued in the United Kingdom and executed in Portugal; and one issued in Portugal and executed in Germany.

The average length of the interviewees was about 42 minutes, varying between the shortest interview lasting 28 minutes and the longest interview lasting 68 minutes. The interviewer was able to achieve an appropriate level of trust with the interviewees. The interviewees answered all the questions. However, it was possible to perceive some embarrassment on their part when speaking about their experiences. Some interviewees had difficulties in remember some details, such as when they were arrested based on an EAW, but it was possible to confirm this information through their lawyers.

In general, the interviews went smoothly, without interruptions. However, some interviewees have answered with sort answers, without providing much detail. One interview was conducted with the presence of a third person, because the interviewee was an elderly person with some health problems and asked for his daughter to be present during the interview. This was the only interview that had some interruptions made by the third person.

- **DATA ANALYSIS**

The methodological approach used was qualitative content analysis, with the propose of identifying common elements that emerged from the experiences recounted during the interviews and carry out an in-depth analysis based on the interviewees' perceptions to find relevant similarities and differences between the experiences. Once the interviews were concluded, the research team transcribed all of them and prepared the interview reporting templates. After all templates have been approved by FRA, the next step was to analyse and discuss the results gathered. Additionally, the research team compared the experiences of the requested persons interviewed, the perceptions of the professional's interviewee in the first phase of this research project, and what it is established by law, aiming to understand if the practices described are in accordance with national law. This approach was strategically followed to develop a critical understanding from the interviews, using adequate techniques for synthesising qualitative data into a structured thematic analysis.

- **BRIEF OVERVIEW OF THE REPORT'S CONTENTS**

This report aims to explore the procedural safeguards in EAW proceedings from the point of view of requested persons and is structured in four sections. After the introduction, the first three sections explore the rights in EAW proceedings: the right to information, the right to interpretation and translation, and the right to access to a lawyer. The fourth section is dedicated to the experiences of the interviewees during the proceedings, i.e., their experience during the execution proceedings of the EAW. The last item is dedicated to highlight the main conclusions that emerge from this fieldwork research.

Overall, the interviewee's experiences were positive, since they were provided with information regarding their rights, interpretation and translation (when needed), and they were assisted by a lawyer. However, some discrepancies were also noted, regarding the gaps between law and practice, and even the assessments made by the professionals interviewed within the scope of this research project, especially regarding the right to information and the right to access to a lawyer.

## RESEARCH FINDINGS

### 1. Right to information

#### a. Provision of information (when, how by whom)

The right to information in criminal proceedings is a constitutional right (Article 27 of the Portuguese Constitution<sup>1</sup>). Furthermore, Articles 57 to 67 of the Code of Criminal Procedure<sup>2</sup> and Article 17 of EAW Law (Law 65/2003, of 23 August<sup>3</sup>), also establish a right to information upon arrest. Both the Code of Criminal Procedure<sup>4</sup> (Article 58) and the EAW Law (Article 14)<sup>5</sup> also established that the requested person, when arrested, shall be provided with a written document stating their rights. And, although Portugal doesn't have a Letter of Rights for requested persons, as established by Directive 2012/13/EU<sup>6</sup>, **it does have the statement of defendant's constitution**, a document that confers the status of defendant to the arrested person and specifies their rights and duties.

The interviewees reported, in a general way, that they were **informed about their rights orally, by the police, upon arrest**. However, two interviewees do not exactly remember whether they were informed by the police about their procedural rights immediately after their arrest. Despite this, the two interviewees who weren't sure if they were informed about their rights upon arrest, also reported that they were able to exercise their right to make a phone call. Only one interviewee was informed in writing by the police, upon arrest, besides the information provided orally about their procedural rights. It was an EAW executed in the United Kingdom.

*They provided a written document. They do it orally, but they also hand over a written document. That's it. At least in my case. (Defendant/Portugal)*

*Eles entregam um documento escrito. Fazem-no oralmente, mas também entregam um documento escrito. Isso sim. Pelo menos no meu caso. (Defendant/Portugal)*

These findings are in line with the position of the professionals interviewed during the first phase of this project, who reported that requested persons are informed of their rights by the police, since these are the first professionals with whom they contact during the proceedings. Nonetheless, some interviewee's perceptions also contrast with the positions of some professionals interviewed (lawyers, judges, and public prosecutors) who said that the judge also informs requested persons of their rights during the hearing, and a written document is provided upon arrest.

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<sup>1</sup> Portugal, [Constituição da República Portuguesa](#) (Constitution of the Portuguese Republic), 10 April 1976.

<sup>2</sup> Portugal, [Decreto-Lei 78/87, que aprova o Código de Processo Penal](#) (Decree-Law 78/87, approving the Code of Criminal Procedure), 17 February 1987.

<sup>3</sup> Portugal, [Lei 65/2003, que aprova o regime jurídico do mandado de detenção europeu](#) (Law 65/2003, which approves the legal framework of the European Arrest Warrant), 23 August 2003.

<sup>4</sup> Portugal, [Decreto-Lei 78/87, que aprova o Código de Processo Penal](#) (Decree-Law 78/87, approving the Code of Criminal Procedure), 17 February 1987.

<sup>5</sup> Portugal, [Lei 65/2003, que aprova o regime jurídico do mandado de detenção europeu](#) (Law 65/2003, which approves the legal framework of the European Arrest Warrant), 23 August 2003.

<sup>6</sup> [Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings](#), OJ 2012 L 142/1.

b. Information about rights

The EAW Law (Article 14)<sup>7</sup> **establishes the specific rights** that apply to requested persons, such as the right to be informed about the existence of an EAW and its content and the possibility of consenting or not to be handed over, the right to a lawyer, and the right to an interpreter. Moreover, it also establishes that the provisions of articles 57 to 67 of the Code of Criminal Procedure<sup>8</sup> shall apply accordingly and the requested person shall be provided with a document containing their rights when they are arrested. The Code of Criminal Procedure establishes additional rights that can be applied to the requested person, such as: being present in acts that directly concern them; being informed of the facts that are imputed to them before making a statement before any authority; appoint a lawyer or request a state-appointed lawyer; being assisted by a lawyer (state-appointed or not) in all procedural acts and consult with them; and being able to appeal decisions that are unfavourable.

According to the findings, all the interviewees, aside from the two who couldn't remember, were informed of the **right to access to a lawyer**.

*As soon as I arrived at the police station, they put me in the cell and someone came straight away to tell me that I could make a phone call, that I could contact anyone I wanted to know that I was OK, what was going to happen to me, where I was going. (...) (Defendant/Portugal)*

*Mal cheguei à esquadra, puseram-me na cela e alguém me veio logo dizer que tinha uma chamada para fazer, que podia contactar alguém que quisesse para saber que estou bem, o que me vai acontecer, para onde é que eu vou. (...) (Defendant/Portugal)*

All the interviewees were also **able to make a phone call**. One of the interviewees of which EAW was executed in the UK also reported that, aside the right to a lawyer and the right to a phone call, they were also informed of the **right to an interpreter** and even **to right to access medicine**.

*(...) As smoking is forbidden, [they spoke about] medicines for smoking, so I wouldn't have anxiety about smoking. They asked me what illnesses I had and what I didn't have. (...) (Defendant/Portugal)*

*(...) Como é proibido fumar, [falaram de] medicinas por causa do tabaco, para não ter a ânsia de fumar. Perguntaram-me as doenças que eu tinha e que não tinha. E mais nada, penso que mais nada. (...) (Defendant/Portugal)*

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<sup>7</sup> Portugal, [Lei 65/2003, que aprova o regime jurídico do mandado de detenção europeu](#) (Law 65/2003, which approves the legal framework of the European Arrest Warrant), 23 August 2003.

<sup>8</sup> Portugal, [Decreto-Lei 78/87, que aprova o Código de Processo Penal](#) (Decree-Law 78/87, approving the Code of Criminal Procedure), 17 February 1987.



Table 1: Were the requested persons informed about their procedural rights?

Portugal	Requested person 1	Requested person 2	Requested person 3	Requested person 4	Requested person 5	Total
<b>YES</b>	<b>X</b>	<b>X</b>	-	<b>X</b>	-	<b>3</b>
In writing (letter of rights)	-	-	-	-	-	<b>0</b>
Orally	-	<b>X</b>	-	<b>X</b>	-	<b>2</b>
In writing (letter of rights) and orally	<b>X</b>	-	-	-	-	<b>1</b>
<b>NO</b>	-	-	-	-	-	<b>0</b>
<b>Don't know/remember</b>	-	-	<b>X</b>	-	<b>X</b>	<b>2</b>
<b>Did not answer</b>	-	-	-	-	-	<b>0</b>

c. Information about the EAW – content and procedure

Three interviewees confirmed that they were informed about the contents of the EAW **by the judge, orally**. Only one interviewee received a copy of the EAW. Another interviewee did not remember if they were informed about the content of the EAW. Nonetheless, in this case, upon arrest, the police mentioned the case-file number and showed documents with an interviewee's photo.

These findings seem to contradict what is established by Article 17 of the EAW Law<sup>9</sup>, according to which, the requested person shall be informed, **when arrested**, of “the existence and content of the European Arrest Warrant”. The findings show that only two interviewees were, in certain way, informed of the contents of the EAW. One requested person interviewed remembers that the police showed them papers related to the casefile and another interviewee was provided with a copy of the EAW. In these cases, the EAW were executed in the United Kingdom and Germany.

*I remember they had the case number, they gave me the understanding that it was that case because I think they showed me papers, but they didn't give it to me. They showed me papers saying that I had proceedings in Portugal, that there was a [European Arrest] Warrant, they had my photo on the first page of all those sheets and basically, I looked there, I saw what it was, I knew what it was. (Defendant/Portugal)*

*Eu lembro-me que eles tinham o número do processo, deram-me a entender que era aquele processo porque acho que me mostraram papéis, mas não me deram a mim. Eles mostraram-me papéis a dizer que tinha processos em Portugal, que havia um mandado de [detenção europeu], tinham a minha foto na primeira página dessas folhas todas e basicamente eu olhei para lá, vi o que era, sabia o que era. (Defendant/Portugal)*

Regarding the **two EAW that were executed in Portugal**, both the interviewees confirmed that they were **informed orally by the judge**.

<sup>9</sup> Portugal, [Lei 65/2003, que aprova o regime jurídico do mandado de detenção europeu](#) (Law 65/2003, which approves the legal framework of the European Arrest Warrant), 23 August 2003.

*I think it was orally, that's for sure. If there was any written document, it was for the lawyer or for the case file. Not to me personally, no. It was all orally. (Defendant/Portugal)*

*Eu penso que foi oralmente, fui de certeza. Se houve algum documento escrito, só se foi para o advogado ou para o processo. A mim, pessoalmente, não. Foi só tudo oralmente. (Defendant/Portugal)*

These findings **confirmed the perspective of the majority of the professionals interviewed**, namely two lawyers, two judges and one public prosecutor who confirmed that requested persons are informed of the content of the EAW against them by the judge, orally, during the hearing.

**Table 2: Were the requested persons informed of the contents of the EAW against them?**

Portugal	Requested person 1	Requested person 2	Requested person 3	Requested person 4	Requested person 5	Total
<b>YES</b>	<b>X</b>	<b>X</b>	<b>X</b>	-	<b>X</b>	<b>4</b>
In writing	-	-	-	-	<b>X</b>	<b>1</b>
Orally	<b>X</b>	<b>X</b>	<b>X</b>	-	-	<b>3</b>
In writing and orally	-	-	-	-	-	<b>0</b>
<b>NO</b>	-	-	-	-	-	<b>0</b>
<b>Don't know/remember</b>	-	-	-	<b>X</b> (The police showed them some documents regarding the case)	-	<b>1</b>
<b>Did not answer</b>	-	-	-	-	-	<b>0</b>

d. Information on consenting to surrender

Except for one interviewee, all interviewees **were informed about what consenting to their surrender entailed**. Two of them were informed orally, by the judge, during the hearing and were also informed by their lawyers before the hearing. Two interviewees were informed only by their lawyers. This is in line with the perspective of most of the professionals interviewed (two lawyers, two judges and two public prosecutors) according to which requested persons are informed about what consenting surrender entails.

*I was in the court cell waiting to be heard and I stayed around 40 minutes/1 hour until my lawyer arrived and they called me into a room. It was calmer then. When the lawyer arrived, I felt that I could ask for things and be heard in some way. He explained to me what my hearing was for, that they were going to ask me if I consented to be handed over or not.*

*The judge, I honestly don't really remember. I know the judge read the file there, read the whole thing. What did I do. Then he asked me if I wanted to be [handed over] or not and I think those were the only questions they asked me. After that, they told me I was going to be arrested, after I said I didn't [consent to the surrender]. They signed I don't know what, set a date for my next hearing, took me to the cell, then I got into a van and was taken directly to prison. (Defendant/Portugal)*

*Eu estava na cela do tribunal à espera para ser ouvido e fiquei à volta de 40 minutos/1hora até que o meu advogado chegou e chamaram-me para uma sala. Ai já foi mais calmo. Quando o advogado chegou eu senti que podia pedir coisas e ser ouvido de alguma maneira. Ele explicou-me que a minha audição seria para isso, que eles me iam perguntar se consentia em ser entregue ou não.*

*O juiz, sinceramente não me lembro bem. Sei que o juiz leu lá o processo, leu aquilo tudo. O que é que eu fiz. Depois perguntou-me se eu queria ser [entregue] ou não e acho que foram as únicas perguntas que me fizeram. Depois disso, disseram-me que ia ser preso, depois de eu dizer que não [consentia na entrega]. Eles assinaram não sei o quê, marcaram uma data para minha próxima audiência, levaram-me para a cela, depois entrei numa van e fui levado diretamente para a prisão. (Defendant/Portugal)*

According to a judge interviewed in the first phase of this project, **information about surrender is a key element** that must be explained to ensure that requested persons make informed decisions. However, one requested person interviewed reported the perception that **their surrender was decided before they had the chance of defending themselves**. In this case, the interviewee was only informed by their lawyer about what consent entailed. Another interviewee, although informed by the judge, also reported that the judge didn't explain the consequences of consenting. In these cases, the EAW was executed in the United Kingdom and Germany.

*It seemed that it was already decided before the person entered the room. (...) I felt it was just another piece of paper that was there. (Defendant/Portugal)*

*Parecia que já estava decidido antes de a pessoa entrar na sala. (...) Senti que era só mais um papel que estava ali. (Defendant/Portugal)*

*[The judge only explained] that it would be quicker to be [handed over] to Portugal from Germany if I said yes. (Defendant/Portugal)*

According to the findings, **only one interviewee was informed about the speciality rule by their lawyer** (the rule that prevents a person surrendered on an EAW from being subjected to criminal proceedings, being sentenced, or deprived of liberty for an offence prior to surrender and different from the one that gave rise to it). Nonetheless, one interviewee also noted that maybe they were not informed about the speciality rule because the judge said that the interviewee would not be handed over to the executing State.

*I was not surrender, so it [the speciality rule] didn't really come up in the discussion. (Defendant/Portugal)*

**Table 3: Were the requested persons informed about what consenting to their surrender entailed?**

	Requested person 1	Requested person 2	Requested person 3	Requested person 4	Requested person 5	Total
<b>YES</b>	<b>X</b>	-	<b>X</b>	<b>X</b>	<b>X</b>	<b>4</b>
<b>NO</b>	-	-	-	-	-	<b>0</b>
<b>Don't know/remember</b>	-	<b>X</b> (The lawyer explained the speciality rule)	-	-	-	<b>1</b>
<b>Did not answer</b>	-	-	-	-	-	<b>0</b>

#### e. Understanding of information

Overall, the interviewees understood the information provided by the authorities (police, judge and public prosecutors). This is in accordance with the view of most professionals interviewed in the first phase of this project (one lawyer, two judges and two public prosecutors). However, there are differences among the requested persons experiences.

One interviewee noted that they didn't always understand the information provided, but they also **highlighted the role the lawyer**, since the lawyer always make sure that the interviewee understood everything regarding the execution of their EAW.

*They practically informed me straight away (by letter as well) but orally they informed me straight away, and they were always excellent [the lawyers]. There's no doubt about it. She was a lady [lawyer], she was excellent. (Defendant/Portugal)*

*Praticamente informavam-me logo (por carta também) mas verbalmente informavam-me logo, e sempre foram excelentes [os advogados]. Não há dúvida nenhuma. Era uma senhora [advogada], ela foi excelente. (Defendant/Portugal)*

Three other interviewees also noted that, although they understood the information provided by the authorities, **the important and relevant information was provided in a clear way by their lawyers**.

When it comes to possible measures that authorities take to ensure that requested person understand their rights, **only one interviewee mentioned that the judge asked the interpreter if the interviewee understood the information provided**. Nonetheless, in the opinion of this interviewee, this was not enough, because the requested persons should be better informed before being heard by the judge.

*He [the judge] only asked [the interpreter] if I understood. But I think we should be better informed before we are heard by the judge. (...) About the process and the rights. The rights too. (Defendant/Portugal)*

*Ele [o juiz] apenas perguntava [ao intérprete] se eu entendia. Mas, eu penso que devíamos ser melhor informados antes de irmos ao juiz. Eu penso isso. (...) Sobre o processo e os direitos. Os direitos também. (Defendant/Portugal)*

The idea that authorities do not take measures to ensure that requested persons understand their rights was also pointed out by a lawyer interviewed in the first phase of this project. According to this lawyer, the authorities, in general, do not check if the requested person understands the information in the EAW and their rights, because, due to the principle of mutual trust, the authorities have more confidence in EAW cases than in extradition cases. This may be one of the reasons why most of the requested persons interviewed said that authorities did not take measures to ensure that they were understanding the information provided.

#### f. Discussion of findings

Overall, the findings show that the interviewees were informed of their rights. The requested persons interviewed were informed by the police, upon arrest, orally. Overall, the interviewees were informed, generally, about the right to a lawyer and the right to a phone call. The law states that the requested person, when arrested, shall be provided with a written document stating their rights. However, only one interviewee was provided with a written document.

Regarding information about the content of the EAW, although the law establishes that requested persons must be informed about the existence and content of the EAW upon arrest, the majority of the interviewees confirmed that they were informed by the judge, orally. This seems to be a contradiction between law and practice. However, these findings confirmed the perspective of some professionals interviewed in the first phase of this project (two lawyers, two judges and one public prosecutor), who confirmed that requested persons are informed of the content of the EAW against them by the judge, orally, during the hearing.

Furthermore, except for one interviewee, all interviewees were informed about what consenting to their surrender entailed. However, only one interviewee was informed about the “speciality rule” by their lawyer.

Although the interviewees understood, in general, the information provided, most of them also highlighted the role of their lawyer in providing and explaining important and relevant information about the proceedings.

## 2. Right to interpretation and translation

### a. Provision of interpretation (decision and means)

The right to interpretation aims to ensure that persons who do not know the language of the proceedings are assisted by an interpreter to understand that proceedings. In Portugal, this is a right established by law - Article 17(3) of the EAW Law<sup>10</sup> and Article 92 (2) of the Code of Criminal Procedure<sup>11</sup>. According to the legal framework, requested persons are assisted by an interpreter **if they do not speak the language of the proceedings**.

The principle that requested persons are only assisted by an interpreter if they do not speak the language seems to be confirmed by the findings. Of the five interviewees, **only three were assisted by an interpreter**. The other two interviewees were not assisted by an interpreter because they spoke the language of the proceedings (i.e., Portuguese and English). The interviews perception is in accordance with the perspective of the professionals interviewed in the first phase of this project, since, based on their experience, requested persons are usually assisted by an interpreter.

*My English to this day is perfect. I understand very well. I never needed to (...). They asked because when you are not English, they ask. There is a questionnaire on a sheet that you have to answer: if I need an interpreter, if I have mental problems, if I have different needs from normal people. They asked all those things. (Defendant/Portugal)*

*O meu inglês até hoje é perfeito. Eu entendo muito bem. Nunca precisei (...). Eles perguntaram porque quando tu não és inglês eles perguntam. Há um questionário numa folha que tens de responder: Se preciso de intérprete, se tenho problemas mentais, se tenho necessidades diferentes de pessoas normais. Eles perguntaram essas coisas todas. (Defendant/Portugal)*

From the findings of the interviewees with professionals during the first phase of this fieldwork research, one lawyer mentioned that the decision to appoint an interpreter should not be subjected to a decision of the judicial authorities and this appointment should be immediate upon arrest whenever a non-national is arrested. This statement seems to be supported by the experiences of the three interviewees who were assisted by an interpreter, since two of them also mentioned that they **only benefited from this right during the hearing**, meaning that they did were not assisted by an interpreter immediately after being arrested.

### b. Translation of documents

Overall, the interviewees mentioned that the documents of the case file that they had access **were in the language of the issuing State**. However, there were differences regarding the translation of those documents.

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<sup>10</sup> Portugal, [Lei 65/2003, que aprova o regime jurídico do mandado de detenção europeu](#) (Law 65/2003 which approves the legal framework of the European Arrest Warrant), 23 August 2003.

<sup>11</sup> Portugal, [Decreto-Lei 78/87, que aprova o Código de Processo Penal](#) (Decree-Law 78/87, which approves the Code of Criminal Procedure), 17 February 1987.

According to the experience of two interviewees, **a translation was not required** since **they understood the language of the original documents**. In one case, the documents were written in Portuguese, the national language of the interviewee, and in the other case, although the documents were written in Spanish, the interviewee, as a Portuguese citizen, understood the contents, since there are similarities between Spanish and Portuguese languages.

*There was the request for arrest. I understood it, the lawyer understood it and made the defence. And then, the Portuguese authorities did not agree that I should be surrendered to Spain. There was no constant exchange of documents. There was no need for that. Of course, if I was going to be tried or something like that, I would really have to have translation. (Defendant/Portugal)*

*Houve o pedido de detenção. Eu percebi, o advogado percebeu e fez a defesa. E depois, o Estado Português não concordou que eu fosse para Espanha. Não houve troca constante de documentos. Não teria essa necessidade. Naturalmente, se fosse julgado ou algo do género teria de ter mesmo tradução. (Defendant/Portugal)*

Another interviewee mentioned that a copy of the EAW was provided to their lawyer. However, the requested person interviewed did not read the EAW, since they totally trusted their lawyer. Only two interviewees **had access to a translated version of the EAW**, in a language that they understood. Nonetheless, one of these interviewees mentioned **that there were some problems with the quality of the translation provided**.

*It was in Portuguese, and they gave me an English version. One of the things my lawyer said is that there was a misunderstanding in the communication between the United Kingdom and Portugal because they had to translate into English. I read the translation and said "this doesn't make any sense, here it is saying one thing and they are answering another. (Defendant/Portugal)*

*Estava em português e eles deram-me uma versão deles em inglês. Uma das coisas que a minha advogada disse é que houve um mal-entendido na comunicação entre Inglaterra para Portugal na tradução do inglês. Eu a ler a tradução dizia "isto não tem sentido nenhum, aqui está a dizer uma coisa e eles estão a responder outra. (Defendant/Portugal)*

The Portuguese **law doesn't clearly establish a list of documents that have to be translated**. However, it should be noted that this is the case of the Portuguese law the sample of the interviewees also include EAW executed in other Member-States (Germany and United Kingdom). Therefore, in the cases where the EAW was executed in Portugal, translation was not needed, and in the other case, the only document translated was the EAW.

### c. Interpretation of consultations with lawyers

The right to be assisted by an interpreter also includes the assistance when the requested person is consulting with their lawyer. Furthermore, the law also establishes that **a different interpreter can be requested** to assist the requested person on the consultations with their lawyer (Article 92(2) of the Code of Criminal Procedure<sup>12</sup>). However, **this is done if there is a need**, meaning that the interpreter

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<sup>12</sup> Portugal, [Decreto-Lei 78/87, que aprova o Código de Processo Penal](#) (Decree-Law 78/87, which approves the Code of Criminal Procedure), 17 February 1987.

is present on the consultations with lawyers if the requested person does not understand the language of the lawyer. It should be noted that this principle of only requesting an interpreter **was also mentioned by the professionals interviewed in the first phase of this project**. Furthermore, one lawyer even pointed out that one reason for waiving this right is if the lawyer has a common language with the requested person, meaning that sometimes there is no interpreter when a requested person is consulting with their lawyer because the lawyer and the requested person speak the same language.

This idea was also confirmed by the findings of this fieldwork research. Of the five interviewees, **only one had the assistance of an interpreter**, because their EAW was being executed in the United Kingdom and the interviewee was Portuguese. In this case, the interpreter **was always physically present during the consultations with the lawyer**. It should also be noted that, in this case, the interviewee was assisted by an interpreter while they were being assisted by their first lawyer. When the law firm of this first lawyer went bankrupt, the interviewee was assisted by another lawyer. From that moment, the interpretation was left to the interviewee's daughter.

*Era através de vidros, mas a reunião era com os três. Aquilo é entre vidros, mas o intérprete estava com o advogado. (Defendant/Portugal)*

*It was through glass, but the meeting was between the three of us. It was through glasses, but the interpreter was with the lawyer. (Defendant/Portugal)*

*When he left [the first lawyer], the interpretation was our responsibility, I no longer had an interpreter, my daughter speaks extremely well [is a professional translator], my son is also reasonable, so the interpretation was our responsibility. (Defendant/Portugal)*

*Depois ele saiu [o primeiro advogado], a interpretação já era connosco, já não tinha intérprete, a minha filha fala extremamente bem [é tradutora profissional], o meu filho também é razoável, por isso, a interpretação já eramos nós que fazíamos. (Defendant/Portugal)*

The remaining interviewees **didn't need the assistance of an interpreter** because the lawyers spoke the same language as the interviewee.

#### d. Additional challenges identified

Overall, the interviewees who needed interpretation during the EAW proceedings also reported that **they were satisfied with the assistance provided**. However, two experiences stand out because the experiences show some challenges regarding interpretation.

One interviewee reported that they **were assisted by several interpreters during the proceedings**. According to this interviewee, at every stage of the proceedings there was a different interpreter. And although the interviewee (a Portuguese citizen) didn't have any problems with the interpreters that assisted them during the proceedings, also pointed out the inconvenience that **all interpreters were of Brazilian nationality and therefore spoke Brazilian Portuguese and not European Portuguese**. This, in the opinion of the interviewee, **had an impact on the quality of the interpretation**, because despite being the same language, there are significant differences.

*Here in United Kingdom, we have a problem. I think the translations are not faithful. (...) Because here the interpreters, at least those who have passed through me, are Brazilians.*



*And the translation was from English to Brazilian and not the translation from English to Portuguese. So, I think there is this gap. I don't know, maybe because there are no Portuguese people wanting to do this work. Because I'm surprised that Brazilians do it, they are almost all Brazilians. And it's not the same thing. (...) I don't think I had any problems, but I think it's also because I speak with many Brazilians. And I understood the interpretation, but I see Brazilians here, and when they speak, the Portuguese people, from Portugal, don't understand half of what they're saying. But Brazilians are the same thing. (Defendant/Portugal)*

*Aqui em Inglaterra, temos um problema. Eu penso que as traduções não são fiéis. (...) Porque aqui os intérpretes, pelo menos todos aqueles que passaram por mim, são brasileiros. E a tradução do inglês para o brasileiro, não é a tradução do inglês para o português. Por isso, penso que aí há essa lacuna. Eu não sei, se calhar até porque também não há portugueses a querer fazer esse trabalho. Porque admira-me serem os brasileiros a fazerem, é quase tudo brasileiros. E não é a mesma coisa. (...) Eu penso que não tive problemas, mas penso que também se deve ao facto de falar com muitos brasileiros. E entendi a interpretação toda, mas eu vejo aqui, até pelo dia-a-dia, brasileiros, e quando estão a falar, os portugueses, de Portugal, não entendem metade do que eles estão a dizer. Mas os brasileiros também é a mesma coisa. (Defendant/Portugal)*

Another interviewee – a Danish citizen – also reported that the interpreter provided by the executing state (in the case, Germany) **was an English interpreter and not a Danish interpreter**. According to the interviewee, they were happy with the English interpreter since English is one of the languages that they understand, however **the question of having a Danish interpreter never came up**.

*I'm Danish, but it didn't come up that I could have a Danish interpreter. At that time I was happy with English. (Defendant/Portugal)*

#### e. Discussion of findings

According to the fieldwork research, when needed, the interviewees were assisted by an interpreter. Another interesting finding was that the interviewees who needed interpretation were assisted by an interpreter only during the hearing. That is, the requested persons were not assisted by an interpreter immediately after being arrested, neither when consulting with their lawyers. In this last situation, the lack of interpretation is explained by the fact that the lawyer spoke the same language that the interviewee. It should also be noted that in every situation where the interpreter was needed, they were always present.

Regarding the right to translation, all the interviewees mentioned that the documents of the case file that they had access were in the language of the issuing State. However, only in two cases there was a translation of the EAW, since in other cases this was not required because the interviewees understood the language of the original documents. However, one interviewee also mentioned that there were some problems with the translation of the EAW.

Additionally, although the interviewees who needed interpretation during the EAW proceedings were satisfied with the assistance provided, two experiences stand out: in one case, the interviewee was assisted by different interpreters during the proceedings and they were always Brazilian interpreters, when the interviewee speaks European Portuguese; in the other case, the interviewee is Danish and

was assisted by a English interpreter, and the question of being assisted by a Danish interpreter did not came up.

### 3. Right to access to a lawyer

#### a. Information about legal assistance (including on dual representation)

Although the right to a lawyer is established by Council Framework Decision 2002/584/JHA<sup>13</sup> of 13 June, the findings regarding information about legal assistance are interesting, because **the interviewees had different experiences**. Only two interviewees reported that they were informed about their right to a lawyer, both orally and one of them was also informed by writing. Another interviewee did not remember if they were informed or if they asked, however they also reported that the police did let them make a call to their lawyer. Another interviewee reported that the police also let them make a call to their lawyer. The other interviewee was not informed of their right to a lawyer. However, the police informed them that they would be provided with a lawyer at the hearing. Therefore, even if the interviewees were not informed of their right to a lawyer, it is conclusive that **they still had the chance to exercise this right**, since they were able of making a call to contact their lawyer and all of them were assisted by a lawyer during the hearing.

*It was right at the moment of the arrest. I don't know if they informed me or if I asked for it. The call I made was straight away to the lawyer and then I asked the lawyer to inform my wife. (Defendant/Portugal)*

*Foi logo no momento da detenção. Agora não sei se eles me informaram ou se eu pedi. A chamada que eu fiz foi logo para o advogado e depois pedi ao advogado para informar a minha mulher. (Defendant/Portugal)*

However, **these findings contradict**, in part, the opinions expressed by the professionals interviewed in the first phase of the project, since they were unanimous in the evaluation that requested persons **are orally informed about the right to a lawyer, by the police, upon arrest**. Furthermore, according to the Portuguese law, **this right should be on the statement of defendant's constitution** (statement conferring the status of defendant) given to every defendant - Article 58 of the Code of Criminal Procedure<sup>14</sup> and Article 14 of the EAW Law<sup>15</sup>. There were two interviewees who were arrested in Portugal within the context of an EAW: one was informed of the right to a lawyer orally and the other didn't remember if they were informed.

Table 4: Were the requested persons informed of their right to access to a lawyer in the executing Member State?

	Requested person 1	Requested person 2	Requested person 3	Requested person 4	Requested person 5	Total
YES	X	-	-	-	X	2
In writing	-	-	-	-	-	0
Orally	-	-	-	-	X	1

<sup>13</sup> [Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States](#), OJ 2002 L 190/1.

<sup>14</sup> Portugal, [Decreto-Lei 78/87, que aprova o Código de Processo Penal](#) (Decree-Law 78/87, approving the Code of Criminal Procedure), 17 February 1987.

<sup>15</sup> Portugal, [Lei 65/2003, que aprova o regime jurídico do mandado de detenção europeu](#) (Law 65/2003, which approves the legal framework of the European Arrest Warrant), 23 August 2003.

In writing and orally	X	-	-	-	-	1
NO	-	-	-	X	-	1
Don't know/remember	-	X (doesn't not remember if the police informed them or if they asked)	X (the police let them make a call)	-	-	2
Did not answer	-	-	-	-	-	0

Regarding **information about dual legal representation**, four interviewees reported that **they were not informed about their right to dual representation** by the authorities. Another interviewee **didn't remember** if they were informed. These findings are in line with the perspectives of the lawyers interviewed in the first phase of the project, since they also mentioned **that requested persons are not informed about this right by the authorities**. It should be noted, however, that four interviewees said that they had dual representation but that happened due to efforts made by their lawyers in the executing State or by someone close to the requested person.

*Afterwards, the lawyer contacted a colleague. After the process advanced, the lawyer had to contact a colleague in Spain, to represent me in something, I can't remember, or to consult the process there. (Defendant/Portugal)*

*À posteriori, o advogado contactou um colega. Depois de o processo avançar, o advogado teve de contactar com um colega em Espanha, para me representar em qualquer coisa, já não me recordo, ou para consultar o processo lá. (Defendant/Portugal)*

One of the reasons for this to happen, at least when Portugal is the executing State, is because there **isn't any legal provision** regarding dual representation. Therefore, authorities do not have a legal obligation of informing requested persons of this right or to take measures to provide one.

**Table 5: Were the requested persons informed by authorities of their right to access to a lawyer in the issuing Member State?**

	Requested person 1	Requested person 2	Requested person 3	Requested person 4	Requested person 5	Total
YES	-	-	-	-	-	0
NO	X	X		X	X	4
Don't know/remember	-	-	X (does not remember)	-	-	1
Did not answer	-	-	-	-	-	0

b. Legal assistance in executing state (access, consultations, lawyer's tasks)

Although requested persons have the right to a lawyer in EAW proceedings, **there are different experiences of the interviewees regarding this matter**. Only two interviewees reported that **they directly choose their lawyers upon arrest**, since they were able to make a phone call. Another

interviewee used that **phone call to call a family member that, in turn, hired a lawyer**. And finally, although the remaining two interviewees were **assisted by a state-appointed lawyer in the proceedings**, one of them was only assisted at the hearing and then, with the help of their boss, they hired a lawyer.

*As I managed to speak [by phone] with my girlfriend, my cousin who was aware of the case managed to contact someone in London who knew that lawyer and that lawyer went there. He was a lawyer for the state. That's what I didn't know. Because we really wanted a lawyer who wasn't from the state, we wanted to pay and do everything right. But we got a good lawyer. He was recommended to us by someone who had a good experience with him. And I also had a good experience with him. He was always very attentive, always tried everything I asked him to do, always went after it, and that's the reason why I'm with him nowadays. (Defendant/Portugal)*

*Como eu consegui falar [telefonicamente] com a minha namorada, o meu primo que estava a par do caso conseguiu contactar alguém em Londres que conhecia esse advogado e esse advogado foi para lá. Ele era advogado do Estado. Isso é que eu não sabia. Porque nós queríamos mesmo um advogado que não fosse do Estado, queríamos pagar e fazer tudo bem. Mas saiu-nos um bom advogado. Foi-nos recomendado por alguém que teve uma boa experiência com ele. E eu também tive uma boa experiência com ele. Sempre foi muito atencioso, sempre tentou tudo o que lhe pedia, sempre correu atrás e é a razão pela qual eu hoje em dia estou com ele. (Defendant/Portugal)*

These findings **match the perspective of the majority of the professional's interviewed in the first phase of the project**, according to which, when a requested person is arrested, they remain arrested until being heard by the judge and have the right to a phone call. If the requested person **knows a lawyer, they can contact this lawyer** and appoint them, **or contact a family member or someone close to them and ask to contact a lawyer** to assist the requested person in the EAW proceedings. Therefore, the requested persons **can choose and get in touch with a lawyer to represent them**, however it also shows that **authorities, in most cases, do not make arrangements to contact a lawyer**.

In fact, when it comes to the assistance provided by the authorities to contact a lawyer, only one interviewee reported **that the authorities make arrangements for the interviewee to be assisted by a lawyer**. It should be noted that this interviewee is the only one assisted by state-appointed lawyers throughout the entire EAW proceedings.

*(...) they provided me with a paper to sign stating that I didn't want [a lawyer] there, I wanted in London. (Defendant/Portugal)*

*(...) posteriormente, deram-me um papel para assinar que não queria ali, queria sim em Londres. (Defendant/Portugal)*

Another interviewee also mentioned that they were assisted by state-appointed lawyer at the hearing. However, they also considered that **the authorities did not help them to make arrangements to contact a lawyer**. In this case, they ended up being represented by a state-appointed lawyer during the hearing but latter, with the help of a close person, they were able to hire a lawyer.

It should be noted that, in both cases, the EAW was issued by Portugal and executed in other Member-States. Nonetheless, **in Portugal authorities also do not help the requested persons to make arrangements to contact a lawyer** because either **requested persons call** their lawyers or family members/close persons to help them in this regard or, if the requested person requests a state-

appointment lawyer, **that lawyer is randomly appointed through the SINOA system** (the IT system of the Portuguese Bar Association).

In the case of the remaining three interviewees, **the authorities did not help or make arrangements** because the interviewees were able to make a phone call directly to their lawyers and to family members that, in turn, made arrangements to hire a lawyer.

Regarding consultations, all the interviewees reported **that they were able to talk in private with their lawyer before the hearing** (either in court or while in detention). One of them also added that they were also able to talk with their lawyer on the phone. These findings **also match the perspective of the professionals interviewed**, since they didn't identify any obstacle in this regard.

*What happened was the police arrested me, and we went to Faro [a town in the south of Portugal] and I think that I was on the phone with [the lawyer] all the time. And my wife was on the phone, as well, with us. So, the only time I met [the lawyer] was in the afternoon before the hearing. (Defendant/Portugal)*

Regarding the tasks of the lawyer in the executing state, **none of the interviewees commented on this issue.**

c. Legal assistance in issuing state (access, consultations, lawyer's tasks)

As stated before, **four interviewees had dual representation.** However, this was **due to diligences made by their lawyers** and not because the authorities took measures to ensure dual representation.

Nonetheless, there are different **experiences of the interviewees regarding this mechanism.** In one case, the lawyer in the issuing state was only contacted to gather information **regarding the detention conditions in the executing State** (in this case, Portugal) to strengthen the argument that the interviewee shouldn't be handed over due to their health problems. Two other interviewees reported their experience with dual representation. One of them **remembers that the lawyers were in constant communication.** The other interviewee did not know what was asked of the lawyer in the issuing state. One other interviewee reported that they **tried to hire a lawyer in the issuing State, but that lawyer refuse to represent them.**

*I didn't have a lawyer in the country of issue. I tried to hire a lawyer who was recommended to me. He looked at the case file and said there was nothing he could do anymore because too much time had passed. As I already had a warrant for my arrest, he said he didn't want to collect my money to make appeals and appeals that he knew would be denied. (Defendant/Portugal)*

*Não tinha advogado no país de emissão. Tentei contratar um advogado que me foi recomendado. Ele analisou o processo e disse que já não dava para fazer nada porque tinha passado muito tempo. Como já estava com mandado de detenção, ele disse que não queria cobrar o meu dinheiro para fazer recursos e recursos que ele sabia que iam ser negados. (Defendant/Portugal)*

d. Communication between the lawyers in both states

As stated above, the interviewees that had dual representation only had it due to diligences made by their lawyers, or people close to them. Therefore, **the interviewees didn't provide much information regarding how their lawyers in the executing State reach the lawyers in the issuing state.** However, it is possible to conclude that authorities do not assist in this manner, as these contacts, according to the professionals interviewed in the first phase of the project, are done in an informal way.

e. Free of cost access to a lawyer (or legal aid)

In Portugal, the right to free legal assistance (or legal aid), is established by the Legal Aid Act<sup>16</sup>, stating that **nationals and citizens of the European Union**, as well as **foreigners and stateless persons with a valid residence permit in a Member State of the European Union**, who prove to be in a **situation of financial insufficiency**, have the right to legal protection (Article 7). However, it should be noted that, according to a lawyer interviewed, **the legal provisions concerning legal aid when Portugal is an executing state have no practical implications, because EAW proceedings don't have costs** for the requested person. According to this lawyer's experience, when Portugal is an executing state, if the requested person does not intend to choose his/her own lawyer, a state funded lawyer is automatically appointed. Moreover, the requested person does not pay court fees.

Regarding **information about legal aid**, only one interviewee reported that they were informed about the possibility of having it. This information was given by the judge. Another interviewee only mentioned that they had assistance of a state-appointed lawyer. Two interviewees were not informed of this right, however they both mentioned that, because they were able to call their lawyers upon arrest, maybe the police didn't think that information about this possibility was required. One interviewee mentioned that they were not informed about the possibility of legal aid, however the lawyer at the hearing was a state-appointed one. Even so, this lawyer told the interviewee that if they needed further assistance they would have to pay.

Of the five interviewees, **only one interviewee reported that they were assisted by state-appointed lawyers during the entire proceedings.** Other interviewee **started by having a state-appointed lawyer** and then a person close to them stated to pay the legal assistance provided to the interviewee.

*There was a lawyer there [at the hearing], present, and I think that he was doing his job at that moment, but he said that if I needed further assistance, I would have to pay. (...) A week later my boss at that time arranged for a German lawyer. (...) my boss paid for my lawyer. Basically, I was not having contact with money. (...) when they arrested me, they took my suitcases and briefcases, where I had money, but I could not get into that.  
(Defendant/Portugal)*

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<sup>16</sup> Portugal, [Lei 34/2004, de 29 de julho, que altera o regime de acesso ao direito e aos tribunais e transpõe para a ordem jurídica nacional a directiva n.º 2003/8/CE, do Conselho, de 27 de Janeiro, relativa à melhoria do acesso à justiça nos litígios transfronteiriços através do estabelecimento de regras mínimas comuns relativas ao apoio judiciário no âmbito desses litígios \(Law 34/2004, amending the system of access to law and courts and transposing into national law Council Directive 2003/8/EC of 27 January 2003 on improving access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes\)](#), 29 July 2004.

The remaining two interviewees **paid in full by the assistance provided by their lawyers.**

f. Discussion of findings

The right to a lawyer is an essential right in EAW proceedings. And although the findings show that all the interviewees were assisted by a lawyer, they had somewhat different experiences, in the sense that only two of them were informed about their right to a lawyer. However, when it comes to information regarding dual representation, four interviewees were not informed of this right, which is in line with the perspectives of the lawyers interviewed in the first phase of the project, since they also mentioned that requested persons are not informed about this right by the authorities.

Another finding is that, although requested persons can choose and get in touch with a lawyer to represent them, in most cases, authorities do not make arrangements to contact a lawyer. It seems that authorities only take steps to contact a lawyer in case the requested person needs a state-appointed lawyer.

Regarding the tasks of the lawyer in the executing state, none of the interviewees developed this issue. However, because four interviewees did have dual representation (due to diligences made by their lawyers in the executing State), they mentioned some of the tasks performed by the lawyers that assisted them in the issuing state such as gathering information to strengthen the defence argument.

Finally, the findings also show some variation regarding legal aid. When it comes to information about this mechanism, only one interviewee reported that they were informed about the mechanism. However, other two interviewees admit that maybe they were informed of this because they were able to call their lawyers upon arrest. Of the five interviewees, only one reported that they were assisted by state-appointed lawyers during the entire proceeding. Another one only had a state-appointed lawyer at their hearing.



#### 4. Execution of the EAW

Overall, the interviewees **felt like they were treated with respect by the police**, upon arrest. However, during the proceedings, there were some aspects/moments when the interviewees felt like something in the behaviour of the authorities was lacking.

On a more general note, one interviewee noted that the treatment by the authorities may have **been due to their age**, because he is an old man and authorities were very respectful toward them.

*It doesn't mean that I was lacking in anything, I wasn't, fortunately, but I also think that it's due to my age. There is a different way of talking than if I were young. So, I think that the treatment there is more for the consideration of my age. (Defendant/Portugal)*

*Não quer dizer que me tenham faltado com alguma coisa, não me faltaram, felizmente, mas também penso que se deve à idade que eu tenho. Há outra maneira de falar, diferente de que se fosse jovem. Por isso, penso que o tratamento aí é mais pela consideração pela minha idade. (Defendant/Portugal)*

According to another interviewee, **they weren't treated with respect by the police, upon arrest**. According to them, the police could have performed the arrest during a time when the interviewee was at home, and not when they were in public, with people that they know around.

*For me, quite honestly, the most bizarre thing was the way I was detained. Why? Because, obviously, I have a statement of identity and residence. There was a party at my youngest son's school (...). The party was at 3 p.m. and that day I was working from home all morning. (...) I had lunch, got ready and went to the family day party. I was at the school gate, with my ex-wife. We were waiting to go in for said family day party, when two police officers approached me, identified themselves, and said I had to accompany them because I was under arrest. (...) And, at the time, I was amazed that they did not go to my house in the morning, where the statement of identity and residence was. (...). I honestly don't want to be treated differently from the others, but I think there should be common sense. I'm absolutely sure that they didn't come to my house, where I was all morning, and they went to other houses, and then come to the entrance of my son's school. The idea it gives me is to be embarrassed or to humiliate me eventually. That's the idea it gave me. But that was basically it. They weren't aggressive, they only identified themselves and said that I had to accompany them. (...) What is the reason, objectively, for going to two of my [former] addresses, and in one in particular, they were asking for me? (...) And then, they know that there is a school, they know that I have children, because they have my whole process. I think it was with the intention of humiliating me. Also, they could have waited for a moment when I was alone. No. They approached me while I was with my ex-wife. I think it was extremely unpleasant. (Defendant/Portugal)*

*Para mim, muito honestamente, o mais bizarro, foi a forma como fui detido no local. Porquê? Porque, como é natural, eu tenho um termo de identidade e residência. Havia uma festa da escola do meu filho mais novo (...). A festa era às 3 da tarde, e nesse dia, eu estive a manhã toda a trabalhar em casa. (...) Almocei, preparei-me, e fui para a dita festa da família. Estava à porta de escola, com a minha ex-mulher. Estávamos à espera para entrar para a dita festa da família, quando dois agentes me abordam, identificam-se, e dizem que tenho de os acompanhar porque estava detido. (...) Acho que é uma forma muito bizarra a forma como*

me deteram. (...) E, na altura, fiquei estupefacto com o facto de eles não terem ido lá a casa de manhã, onde estava o TIR (...). Eu honestamente não quero ser tratado de uma forma diferente dos outros, mas acho que há que ter um pouco de bom senso. Eu tenho a certeza absoluta que não foram a minha casa, onde eu estive durante a manhã toda, e andaram nas outras casas, e depois foram à porta da escola do meu filho. A ideia que me dá é para me envergonharem ou enxovalharem eventualmente. Foi a ideia que me deu. Mas basicamente foi isso. Não foram agressivos, só se identificaram e disseram que tinha de os acompanhar. (...) Qual a razão, objetivamente, para irem a duas moradas minhas [antigas], e numa em concreto, estiveram a perguntar por mim? (...) E depois, sabem que há uma escola, sabem que eu tenho filhos, porque têm o meu processo todo. Eu acho que foi com um intuito de humilhação. Mais, podiam ter esperado por um momento em que eu estivesse sozinho. Não. Abordaram-me estava eu junto da minha ex-mulher. Acho que foi extremamente desagradável. (Defendant/Portugal)

Another interviewee mentioned **that they had a very positive experience with the authorities and that they felt like they were treated with respect through the proceedings**. However, they did express some surprise that the authorities did not provide transport back home after being heard by the judge. They also pointed out **some criticism regarding the issuing of the EAW**.

*I mean, I was surprised [...] the judge said “you are free to go”. But they don’t bring me home, you know. How are you going make your way back? But I don’t know, I mean, that’s normal, I heard. They drove me three hours up north, I thought that they brought me back, but I don’t know. [...] [The lawyer] took me to the train station and I came back on the train. But it just seemed a bit [...].*

*[...] But, for me, is just amoral. And I could have been unlucky, I mean, I had [the lawyer] to look after me, I had a judge that could see straight through it. So, for me, the whole base of the thing needs to be examined before the State actually executes it, because if governments can lie [...]. For me, personally, it’s also kind of cruel. (Defendant/Portugal)*

Another interviewee said that they were treated with respect during the hearing. However, according to their perception, **their surrender seemed to have already been decided even before they were presented to the judge**. The judge was not available to hear them explaining their situation and how their life had changed since then.

*I think it's a bit unfair the way I'm being judged in this process because they never heard my story, they never gave me the [opportunity] 'look, let's see what he has to say' or 'let's see if he can prove his current situation'. Because I really made a very big change in my life. I regret, the biggest regret in my life today is that. I feel that I've been in prison for ten years. I've never stayed in a prison in Portugal, but in my mind, I live constantly thinking about that. I wish they had listened to my part. (...) I think they have made several mistakes in my process, my lawyer says it has several mistakes, but they won't reopen the hearing so I can prove that they are judging me for things that have nothing to do with it. They just want me to comply, they don't give me any opportunities. I feel a bit wronged about that. (Defendant/Portugal)*

*Eu acho um pouco injusto a maneira como estou a ser julgado neste processo devido a nunca terem ouvido a minha história, nunca me terem dado [oportunidade] “olha, vamos lá ver o que ele tem a dizer” ou “vamos lá ver se ele consegue provar a situação dele atual”. Porque realmente eu fiz uma mudança muito grande na minha vida. Eu arrependo-me, o maior arrependimento na minha vida hoje em dia é esse. Eu sinto que estou preso há dez anos. Eu nunca fiquei numa prisão em Portugal, mas na minha mente vivo constantemente a pensar naquilo. (...) Acho que cometeram vários erros no meu processo, a minha advogada diz que tem vários erros, mas eles não reabrem a audiência para poder provar que me estão a julgar*

*por coisas que não têm nada a ver. Só querem que eu cumpra, não me dão oportunidades. Sinto-me um pouco injustiçado quanto a isso. (Defendant/Portugal)*

Of the five interviewees, **four refused to be surrendered to the issuing State**. Only **one of them accepted to be surrendered**, but then, then **they changed their mind** and expressed their refusal in being handed over. However, because the situations of the interviewees were different, the arguments used to refuse surrender were also different.

In the case one interviewee, they refused to be surrender based on **their age, health, their integration in the executing State** (United Kingdom) **and the detention conditions of the issuing State**, in the case, Portugal. This interviewee further stated that they felt like the court did consider their arguments, however, **they ended up being surrendered** to Portugal, the issuing State.

In another case, the interviewee refused to be surrendered on the basis that they were **available to collaborate with the Spanish authorities** (the issuing authorities), and the fact that **there was a process ongoing in Portugal** (the executing State) **for the same facts**. The interviewee considered that the court took their arguments into account, because they were not handed over.

*Firstly, being 100% available to collaborate with Spanish justice. And there were other alternatives like a letter rogatory or the videoconference, or the one that I also mentioned, I was willing to go with the guarantee that I would come back. Secondly, there was a process ongoing in Portugal exactly for the same facts. (Defendant/Portugal)*

*Em primeiro, estar 100% disponível para colaborar com a justiça espanhola. E havia outras alternativas como uma carta rogatória ou a videoconferência, ou aquela que também referi, eu disponibilizava a ir, com a garantia de que vinha. Segundo ponto, estar a decorrer em Portugal um processo exatamente pelos mesmos factos. (Defendant/Portugal)*

Another interviewee refused to be surrender to Portugal (the issuing State) by arguing that the **crimes were committed while the interviewee was young. The interviewee is now socially and professionally integrated into the community of the executing State** (United Kingdom). And although the interviewee felt like the authorities **did not consider their situation, they were never surrender to the issuing State**.

*The court did not consider my arguments. They didn't explain themselves very much. I think here in England they want to send, and it's solved there [in the issuing country of the EAW]. If I was [handed over] there was that thing of not being able to come back here for 5 years or 10 years, I think now it's even 10 years. They literally what they want is that, go and that's it. (Defendant/Portugal)*

*O tribunal não considerou os meus argumentos. Eles não se explicavam muito. Acho que aqui em Inglaterra eles querem enviar e resolve-se lá [no país de emissão do MDE]. Se eu fosse [entregue] havia aquela coisa de não poder voltar aqui durante 5 anos ou 10 anos, acho que agora até é 10 anos. Eles o que querem é literalmente isso, vai e pronto. (Defendant/Portugal)*

The remaining two interviewees **also refused to be handed over** (although one of them did consent initially, as stated before), however, **they did not offer much information regarding the arguments used to refuse their surrender**. However, one of them did mention some inconsistencies in the process. At this point, it should also be pointed out that one of these two interviewees did spend 42 days in jail while their situation was being discussed, where they had some difficulties.

*I was in my cell for 23 hours a day. No access to television, I had a little radio, and there were very few books in English. So, sometimes, if I was lucky, I could grab a book in English. I decided to write my own book, while I was there, but even getting paper, to write that book,*

*was a big problem. It was a very tough time, a very hard time. (...) I think that 42 days, in a cell for 23 hours, with no access to my money and to my briefcase or things like this, I think that is very harsh. (Defendant/Portugal)*

## CONCLUSION

The main results of the interviews are interesting and enable us to identify both positive aspects and some challenges to ensure the procedural safeguards in European Arrest Warrant proceedings. Although some interviewees did not elaborate much on their answers, due to embarrassment of remembering the difficulties they went through during the EAW proceedings, the following conclusions can be highlighted.

Overall, the interviewees' experiences regarding their procedural rights were positive, since they were provided with the essential safeguards established by law to protect requested persons in EAW proceedings. However, the main findings also disclosed some discrepancies between law and practice, as well as some perceptions in contradiction with the assessments made by the professionals interviewed in the first phase of the project.

The interviewees answered that they were informed about their rights orally, by the police, upon arrest. Contrary to what is provided for in the legal framework, no written document stating the rights of the requested persons was given to four of the five interviewees. This conclusion is somewhat in contradiction with the results of the interviews conducted with professionals in the first phase of this fieldwork research, as the professionals interviewed said that once the requested persons are arrested, they are provided with a document stating their rights. Additionally, regarding the content of the EAW, the interviewees confirmed that they were informed about that orally, by the judge. The majority of the requested persons interviewed were also informed about what consenting to their surrender entailed orally, by the judge. However, only one interviewee was informed about the "speciality rule" and this information was provided by their lawyer.

According to the interviewee's experience, when needed, they were assisted by an interpreter. However, interpretation was provided only during the hearing with the judge. According to their experience, the requested persons were not assisted by an interpreter immediately after being arrested, neither when consulting with their lawyers. One of the interviewees criticised the quality of the interpretation, because the interpreters spoke Brazilian Portuguese, that is different from the European Portuguese. The interviewees had also access to translated documentation when needed, since the documents of the case file were in the national language of the issuing State. There was a translation of the EAW only in two cases, because the other interviewees understood the language of the original documents and did not require the translation of the casefile' documents.

Regarding the right to a lawyer, the findings show that all interviewees were assisted by a lawyer. The interviewees were generally satisfied with the work of their lawyers, considering that in cases where there were some information gaps on the part of the authorities, the lawyers were key actors in assisting and clarifying the requested persons. The majority of the requested persons interviewed answered that they were not provided with information regarding the right to dual representation. Nonetheless, in four cases, the lawyer who assisted the requested persons in the execution state have worked in articulation with a lawyer in the issuing state. This strategic approach was pursued by the lawyer of the executing state.

Another interesting finding is that, although the interviewees had the chance to choose and get in touch with a lawyer to represent them, in most cases, the authorities have not taken any action to help the requested persons to contact a lawyer chosen by them. This intervention by the authorities only occurred in cases of a state appointed lawyer.

The findings also showed that four interviewees did refuse to be surrender, presenting different reasons, either personal or procedural, depending on the individual case. And, although, their

perception is that judges of the execution State took their arguments into account, one interviewee did end up being handed over to the issuing State. A different situation was experienced by one interviewee who consented to be handed over because he didn't understand what consent would mean. According to their perception, the judge only explained that the process to be handed over to Portugal would be quicker if the interviewee consented. After being heard by the judge and consenting to surrender, the interviewee remained in prison in Germany for 42 days. During that time, his lawyers continued to work on the case and the interviewee ended up not being handed over to the issuing State.

Regarding the treatment that the interviewees received during the EAW proceedings, overall, they felt like they were handled with respect. However, the interviewees also reported some aspects/moments in which they consider that the authorities' actions were not correct, namely in a situation of arrest carried out in Portugal in which the police arrested the requested person near his son's school. From the interviewee's perspective, this was an unnecessary situation that humiliated him.